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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,165	04/14/2004	Timothy J. Kardosz	ERN-TSH-001	6340
25784 7590 09/11/2009 MICHAEL O. SCHEINBERG P.O. BOX 164140 AUSTIN, TX 78716-4140				
EXAMINER WALTERS, RYAN J				
ART UNIT		PAPER NUMBER		
3726				
MAIL DATE		DELIVERY MODE		
09/11/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/824,165	Applicant(s) KARDOSZ ET AL.
Examiner RYAN J. WALTERS	Art Unit 3726

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 21-32.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/DAVID P. BRYANT/
 Supervisory Patent Examiner, Art Unit 3726

Continuation of 11, does NOT place the application in condition for allowance because:

1. Applicant argues on page 7 that Ellis teaches making a frame not a truss, where a truss comprises members that meet at angles of other than ninety degrees.

-Note that Ellis teaches making C channel studs just like the instant invention which can inherently be used to make a truss. Note that the Ellis reference is not relied on to teach making the truss members; Buers already teaches making truss members that meet at varying angles other than ninety degrees and therefore this argument is erroneous. Ellis is relied on to teach generating data for forming members according to specific data including location and dimension, which could be applied to any C channel studs which can inherently be used in any frame or truss assembly.

2. Applicant argues on pages 8-9 that a skilled person would not consider "an assembly tag that specifies connections of the stud" to encompass the holes of Buers because they are not "tags" and do not "specify".

-First note that rejections are made in view of persons of ordinary skill in the art, not skilled persons. The examiner respectfully disagrees with the traversal of the rejection. The holes of Buers DO specify the connections of the stud since the holes explicitly show where the stud can be connected. In regards to the holes not being a "tag", Merriam-Webster's Collegiate Dictionary 10th Edition defines a tag as "something used for identification or location" and thus a hole can inherently be considered to be a "tag" since it identifies where another stud can be connected to it.

3. Applicant argues on page 9 that a skilled person would not consider "an assembly tag that specifies the truss in which the stud is to be used" to encompass putting the length of a truss on a tag. Applicant further states that interpreting a truss identifier to be a length identifier is inconsistent with the specification.

-First note that rejections are made in view of persons of ordinary skill in the art, not skilled persons. The examiner respectfully disagrees with the traversal of the rejection. By applying the assembly tag on the stud, this inherently specifies that the stud is to be used with a truss that requires that length of stud.

In response to applicant's argument that interpreting a truss identifier to be a length identifier is inconsistent with the specification, it is noted that the features upon which applicant relies (i.e., a truss identifier) are not recited in the rejected claim 27. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

4. Applicant states on page 9 that applicants reiterate their arguments in their Feb 17, 2009 response for the remaining claims.

-Note that these arguments have been addressed in the 5/13/2009 Final Rejection.